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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications Issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 25 सितम्बर, 2012

आ.अ. 35.—यतः, भारत निर्वाचन आयोग का यह समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में विनिर्दिष्ट आन्ध्र प्रदेश राज्य में विधान सभा हेतु साधारण निर्वाचन, 2009 में नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से स्तम्भ (4) के सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951, तथा तद्वीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है;

और यतः, उक्त अभ्यर्थी ने निर्वाचन आयोग द्वारा सम्यक् नोटिस दिए जाने के बावजूद उक्त असफलता के लिए कोई कारण या स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अभ्यावेदन यदि कोई हो, पर विचार करने के पश्चात् भारत निर्वाचन आयोग का यह समाधान हो गया है कि उक्त असफलता के लिए उनके पास कोई उपयुक्त या न्यायोचित कारण नहीं है;

अतः, अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी सदन या किसी राज्य/संघ राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए, इस आदेश की तारीख से तीन वर्षों की अवधि के लिए निरर्हित घोषित करता है :—

सारणी

क्रम सं.	निर्वाचनों का विवरण	संसदीय निर्वाचन क्षेत्र की क्रम सं. व नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम व पता	निरर्हता का कारण
(1)	(2)	(3)	(4)	(5)
1.	आन्ध्र प्रदेश विधान सभा निर्वाचन, 2009	110-पिनापाका (अ.ज.जा.)	बी. नागेशवार राव म. सं.-8-2-432/1, बंदारूगुदेम गांव, मनुगुरु मण्डल, खम्माम जिला	अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।
2.	-वही-	-वही-	भुकैया सौथरामुलु म. सं. 8-44/1, अंजनापुरम गांव, मोरमपल्ली बनजार (जी पी) बुरगामपाड मण्डल, खम्माम जिला	-वही-
3.	-वही-	-वही-	श्री दारावथ हनमंथ नायक, म. सं. 6-1-163 सेशगिरी नगर, मनुगुरु (गांव एवं मण्डल) खम्माम जिला	-वही-
4.	-वही-	-वही-	रविन्द्र कुमार दारावथ म. सं. 9-1-9, पायलट कालोनी रोड, बंदारूगुदेम, मनुगुरु मण्डल, खम्माम जिला	-वही-
5.	-वही-	114-मधिरा (अ.ज.जा.)	श्री वनगुरी रमेश, गांधी नगर कालोनी बोप्पाराम (बी), चिन्ताकणि मण्डल	-वही-
6.	-वही-	-वही-	श्री जॉन गुडीपति, म. सं. 8-3-163/1, निजामपेट, वार्ड-14 खम्माम	-वही-
7.	-वही-	-वही-	ईनापानुरी ईस्टर स्वर्णलता, म. सं. 1-924 मधिरा (गांव एवं मण्डल) खम्माम जिला	-वही-
8.	-वही-	119-भद्राचलम (अ.ज.जा.)	पयाम चिना रामा राव, म. सं. 1.63 वुम्मीदीवरम (बी), बी आर पुरम मण्डल, खम्माम जिला	-वही-
9.	-वही-	112-खम्माम	प्लवारपु श्री रामुलु म. सं. 2-1-313, पी एस आर रोड, खम्माम टाउन और जिला	-वही-

[सं. 76/आ.प्र.-वि.स./2009]

आदेश से,
आर. के. श्रीवास्तव, प्रधान सचिव

ELECTION COMMISSION OF INDIA

ORDER

New Delhi, the 25th September, 2012

O. N. 35.—Whereas, the Election Commission of India is satisfied that each of the contesting candidates specified in column 4 of the Table below at the General Election to the Andhra Pradesh Legislative Assembly, 2009 as specified in column 2 and held from the constituency specified in column 3 against his/her name has failed to lodge the account of his/her election expenses as shown in column 5 of the said Table as required by the Representation of the People Act, 1951 and the Rule made thereunder;

And whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice by the Election Commission or after considering the representation made by them, if any, the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column 4 of the Table below to be disqualified for being chosen as and for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State or Union Territory for a period of three years from the date of this order :—

TABLE

Sl. No.	Particulars of Election	Sl. No. and Name of the Legislative Assembly	Name and Address of the Contesting Candidate	Reason for Disqualification
(1)	(2)	(3)	(4)	(5)
1.	General Elections to Legislative Assembly of Andhra Pradesh, 2009	110-Pinapaka (ST)	B. Nageswara Rao, H. No. 8-2-432/1 Bandarugudem Village, Manuguru Mandal, Khammam Dt.	Failed to lodge any account of his election expense.
2.	-do-	-do-	Bhukya Seethramulu, H. No. 8-44/1, Anjanapuram Village, Morampalli Bazar (GP) Burgampad Mandal, Khammam Dt.	-do-
3.	-do-	-do-	Sh. Daravath Hanmanth Nayak, H. No. 6-1-163, Seshagiri Nagar, Manuguru (Village & Mandal), Khammam Dt.	-do-
4.	-do-	-do-	Ravindar Kumar Dharavath, H. No. 9-1-9, Pilot Colony Road, Bandarugudem, Manuguru Mandal, Khammam Dt.	-do-
5.	-do-	114-Madhira (SC)	Sh. Vanguri Ramesh, Gandhi Nagar Colony, Bopparam (V), Chintakani Mandal.	-do-
6.	-do-	-do-	Sh. John Gudipati, H. No. 8-3-163/1, Nizampet, Ward-14, Khammam.	-do-

(1)	(2)	(3)	(4)	(5)
7.	General Elections to Legislative Assembly of Andhra Pradesh, 2009	114-Madhira (SC)	Inapanuri Esther Swarnalatha, D. No. 1-924, Madhira (V) & (M), Khammam Dist.	Failed to lodge any account of his election expense.
8.	-do-	119-Bhadrachalam (ST)	Payam China Rama Rao, H. No. 1.63 Vummidivaram (V), VR Puram Mandal, Khammam District.	-do-
9.	-do-	112-Khammam	Palavarapu Sree Ramulu, H. No. 2-1-313, PSR Road, Khammam Town and District.	-do-

[No. 76/AP-LA/2009]

By Order,

R. K. SRIVASTAVA, Principal Secy.

आदेश

नई दिल्ली, 25 सितम्बर, 2012

आ.अ. 36.—यतः, भारत निर्वाचन आयोग का यह समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में विनिर्दिष्ट लोकसभा हेतु साधारण निर्वाचन, 2009 में नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से स्तम्भ (4) के सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951, तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है;

और यतः, उक्त अभ्यर्थी ने निर्वाचन आयोग द्वारा सम्पक् नोटिस दिए जाने के बावजूद उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है, या उनके द्वारा दिए गए अभ्यावेदन, यदि कोई हों, पर विचार करने के पश्चात् भारत निर्वाचन आयोग का यह समाधान हो गया है कि उक्त असफलता के लिए उनके पास कोई उपयुक्त या न्यायोचित कारण नहीं है;

अतः, अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10क के अनुसरण में, नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी सदन या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा अथवा विधान परिषद् के लिए सदस्य चुने जाने और होने के लिए, इस आदेश की तारीख से तीन वर्षों की अवधि के लिए निरर्हित घोषित करता है :—

सारणी

क्रम सं.	निर्वाचनों का विवरण	संसदीय निर्वाचन क्षेत्र की क्रम संख्या व नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम व पता	निरर्हता का कारण
(1)	(2)	(3)	(4)	(5)
1.	लोक सभा साधारण निर्वाचन, 2009	23-काकीनाडा	श्री अकै सूर्यनाराया, रामालयम के पास, वी. के. रायपुरम (वी), समालकोट (एम)	अपने निर्वाचन व्ययों का कोई भी व्यौरा दाखिल करने में असफल रहे।
2.	-वही-	16-महबूबाबाद (अ.ज.जा.)	के चेला रंगारेड्डी मकान संख्या 13-1-162/1 सी पी आई-एम एल न्यू डेमोक्रेसी आफिस, अशोक नगर कालोनी, भद्राचलम, जिला-खम्माम-507111	-वही-

(1)	(2)	(3)	(4)	(5)
3.	लोक सभा साधारण निर्वाचन, 2009	17-खम्माम	शेख मदर साहेब, गांव कुरुनावल्ली, थाल्लाडा मंडल, जिला खम्माम	अपने निर्वाचन व्ययों का कोई भी ब्यौरा दाखिल करने में असफल रहे।
4.	-वही-	17-खम्माम	डांडा लिंगैयाह, गांव मड्डुलापल्ली, कामेपल्ली मंडल, जिला खम्माम	-वही-

[सं. 76/आं.प्र.-लोक सभा/2009]

आदेश से,
आर. के. श्रीवास्तव, प्रधान सचिव

ORDER

New Delhi, the 25th September, 2012

O. N. 36.—Whereas, the Election Commission of India is satisfied that each of the contesting candidates specified in column 4 of the Table below at the General Election to the Lok Sabha, 2009 as specified in column 2 and held from the constituency specified in column 3 against his/her name has failed to lodge the account of his/her election expenses as shown in column 5 of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice by the Election Commission and after considering the representation made by them, if any, the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column 4 of the Table below to be disqualified for being chosen as and for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State or Union Territory for a period of three years from the date of this order :—

TABLE

Sl. No.	Particulars of Election	Sl. No. and Name of the Parliamentary Constituency	Name and Address of the Contesting Candidate	Reason for Disqualification
(1)	(2)	(3)	(4)	(5)
1.	General Elections to Lok Sabha, 2009	23-Kakinada	Sh. Akay Suryanaraya, Near Ramalayam, V. K. Rayapuram (V), Samalkot (M)	Failed to lodge any accounts of his election expense.
2.	-do-	16-Mahabudabad (ST)	Kechela Ranga Reddy, H. No. 13-1-162/1, CPI-ML New Democracy Office, Ashok Nagar Colony, Bhadrachalam, Khammam District-507111.	-do-
3.	-do-	17-Khammam	Shaik Madar Saheb, Kurnavalli Village, Thallada Mandal, Khammam District.	-do-

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(1)	(2)	(3)	(4)	(5)
4.	General Elections to Lok Sabha, 2009	17-Khammam	Danda Lingaiah, Maddulapalli Village, Kamepalli Mandal, Khammam District.	Failed to lodge any accounts of his election expense.

[No. 76/AP-HP/2009]

By Order,

R. K. SRIVASTAVA, Principal Secy.

नई दिल्ली, 25 सितम्बर, 2012

आ.अ. 37.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 2009 की निर्वाचन अर्जी संख्या 12 में इलाहाबाद उच्च न्यायालय के तारीख 27 अप्रैल, 2012 के निर्णय को एतद्वारा प्रकाशित करता है।

(निर्णय अंग्रेजी भाग में छपा है)

[सं. 82/उ.प्र.-लो.स./12/2009(इला.)]

आदेश से,

आर. के. श्रीवास्तव, प्रधान सचिव

New Delhi, the 25th September, 2012

O. N. 37.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgment dated 27th April, 2012 of the High Court of Judicature at Allahabad in Election Petition No. 12 of 2009.

RESERVED

Case :—Election Petition No. - 12 of 2009

Petitioner :—Kunwar Chand (Vakil)

Respondent :—Dr. Rama Shanker S/o Sri Sone Lal

Petitioner Counsel :—In Person, A. K. Pandey, Ravi Shanker Prasad, Satish Trivedi

Respondent Counsel :—Pankaj K. Shukla, Ravi Shankar Prasad

Hon'ble Prakash Krishna, J.

To constitute 15th Lok Sabha, the Election Commission of India on 2nd of March, 2009 issued a notification under Section 14(2) of the Representation of People Act, 1951 (hereinafter to called as the RP Act) providing that the election in the country shall be held in five phases. In the present election petition we are concerned with the election of 15th Lok Sabha from 18th Agra (Reserved) Parliamentary Constituency. The following election programme was declared :—

(i) Date of notification of polls	02-03-2009
(ii) Last date of nominations	18-04-2009
(iii) Date of Scrutiny of nomination	19-04-2009
(iv) Date of withdrawal of nomination	20-04-2009
(v) Date of polling	07-05-2009
(vi) Date of Re-polls, if required	09-05-2009
(vii) Date of counting of votes	16-05-2010
(viii) Date of declaration of result	16-05-2010

The present petitioner was one of the candidates who contested the election on the symbol of elephant sponsored by the political party known as Bahujan Samajwadi Party (BSP). Respondent is the successful candidate in the said election who contested it on the ticket of Bhartiya Janta Party with symbol of "lotus". In the said election 6,47,909 the total valid votes were cast. The respondent secured 2,03,697 votes. The petitioner secured 1,93,982 votes. The respondent having secured the maximum number of votes was declared elected by a margin of 9,715 votes.

Challenging the legality and validity of the election of respondent, the present petition under Sections 80/81 of the RP Act has been filed mainly on the ground that the returned candidate has committed corrupt practices by publishing a false statement of fact regarding his personal character and conduct.

The grounds raised in the election petition in brief are as follows :—

1. The returned candidate has criminal background but in his affidavit filed in compliance of Section 33(1) and 33A [in Form 26 Rule 4(a)] of the RP Act, he did not disclose the same.
2. The elected candidate was charge-sheeted in Case Crime No. 661 of 1999 having charge sheet No. A 423 dated 9th of December, 1998 under Sections 323/506 IPC and was held guilty by the trial Court. The returned candidate did not disclose this material fact which affected the result of the election petitioner as such the election of the returned candidate is liable to be declared void under Section 100(1) (d) of the RP Act.
3. The affidavit of returned candidate in Form 26 is a false affidavit being not in conformity of the provisions of the RP Act, Rules and Order. The nomination filed by the returned candidate ought to have been rejected.
4. The returned candidate committed the corrupt practices under Section 123(4) of the Act by publishing a false statement of fact which he believed to be false and did not believe to be true regarding to his own personal character and conduct.

In paragraphs 7 to 20, the facts pertaining to the ground referred to above have been disclosed. It has been pleaded that the returned candidate did not disclose either pending criminal cases or decided cases against him. By way of amendment, it was pleaded that the returned candidate did not disclose the First Information Report registered as Case Crime No. 347 of 2006 under Section 25 of the Arms Act in Police Station Sikandara, District Agra wherein he is a co-accused. The returned candidate has not disclosed the FIR of Case Crime No. 242 of 2006 under Section 25 of the Arms Act in Police Station Sikandara, Agra and FIR of Case Crime No. 190 of 2003, dated 23rd of September, 2003 registered as Case Crime No. 352 of 2003 under Sections 147, 148, 149, 307 and 427 IPC. Investigation against the returned candidate is still continuing.

In paragraph 15 of the petition it has been stated that the nomination paper of the returned candidate is defective and incomplete due to non disclosure of Case Crime No. 661 of 1998 having Charge sheet No. 423, dated 19th of December, 1998 under Sections 323, 506 IPC. The nomination paper was, thus, improperly accepted and was liable to be rejected. By non disclosure of criminal cases the returned candidate showed that he is a clean person having no criminal background. Voters voted him taking clean image of the returned candidate but his image is not clean. The returned candidate is, thus, guilty of commission of corrupt practices as defined under Section 123(4) of the Act by publication through his affidavit of false statement of fact about the personal character and conduct which he believed to be false and did not believe it true.

In reply, the returned candidate has denied in his written statement the allegations levelled against him regarding the corrupt practices, filing of incomplete or false affidavit or having any criminal background. He came out with the case that he did not conceal any material facts in respect of his criminal antecedents in his affidavit which was filed along with the nomination papers in compliance of Section 33(1) and 33A of the RP Act. Under the amended RP Act containing Section 33A a candidate seeking to contest election of Member of Parliament has to disclose if he is accused of any offence punishable with imprisonment of two years or more in a pending case where the charge has been framed or he has been convicted for an offence other than the offence referred to in sub-section (1) or sub-section (2) or covered in sub-section (3) of Section 8 and sentenced to imprisonment for one year or more. The allegation of returned candidate is that he was charge sheeted in Case Crime No. 661 of 1998 but was acquitted in the Criminal Case No. 156 of 1999 *vide* the judgment dated 16th of September, 2005. This was the solitary criminal case against him. He has never been involved in any other criminal case and as such there is no question of non-disclosure of any criminal case by him at any stage of the election process including the stage of filing of the nomination paper. In substance, the pleading in the written statement is that the returned candidate has not concealed any material fact in the affidavit filed along with the nomination paper. To be specific no criminal case was pending against him at the time of filing of the nomination paper nor he was ever convicted.

Section 33A of the Act and Form 26 were complied with in letter and spirit. The nomination paper was rightly accepted by the Returning Officer and election was fair and he has not committed any corrupt practice in the election.

The following issues were framed on the basis of the pleadings of the parties :—

1. Whether, the Returned Candidate did not comply the provisions of Section 33 (1) & 33(A) of Representation of People Act read with Rule 4(a) of Conduct Rules and as such, the election of 18 Agra Parliamentary Constituency (S.C.), U.P. is liable to be set aside under Section 100 (1) (d) (iv) of the Representation of People Act ?
2. Whether the Returned Candidate has committed the corrupt practice by publishing a false statement of fact regarding his own personal character and conduct and as such the said publication of false calculated statement of fact materially affected the prospects of the Contesting Candidates' election ?
3. Whether, the nomination paper of the Returned Candidate was improperly accepted on the basis of false affidavit submitted in Form 26 ?

The petitioner examined himself as PW/1, Ashok Kumar Singh PW/2, Surya Kant Divedi, PW/3, Kapil Dev PW/4, Naresh Kumar PW/5, Manoj Pawar PW/6 and Gulab Singh PW/7. The returned candidate examined himself as DW/1 and Chandra Pal DW/2.

The petitioner also produced copies of the nomination paper and Form 26 by way of documentary evidence.

Issue Nos. 1 and 3 :

These issues are overlapping and interlinked and were heard together. In the election petition it has been pleaded that the nomination paper is defective as it is incomplete. It was argued that the Form No. 26 does not contain the true and correct facts. But during the course of argument, the learned counsel for the petitioner could not point out any error, omission or mistake either in the nomination paper or in Form No. 26. The learned counsel for the petitioner could not substantiate his argument of non compliance of the provisions of Section 33(1) and 33A of the RP Act read with Rule 4(a) of the Act. He also could not point out any illegality, irregular or omission in Form 26 which is in the form of affidavit. As a matter of fact the learned counsel for the petitioner could not dispute that the nomination paper of the returned candidate was validly accepted. He also could not point out any infirmity in Form 26. The copy of Form 26 contains the relevant material. The argument proceeded on the footing that the returned candidate was confined to Jail from 18th December, 1988 to 22nd December 1988 in Agra Jail and this fact was not disclosed in Form 26. The said argument has no merit and is liable to be rejected. Under Form 26, a person is required to disclose the particulars of the crimes etc. for his imprisonment for a period of one year or more. Admittedly, it is neither pleaded nor proved that the returned candidate was confined to jail for a period of one year or more. This being so non mention of the period of confinement in jail less than one year is of no consequence. Besides the above, no other argument was advanced and as a matter of fact, the above argument which was initially put forward was not pursued any further. In view of the above, the issue Nos. 1 and 3 are, therefore, decided against the petitioner and in favour of the returned candidate.

Issue No. 2 :

This issue relates as to whether the returned candidate has committed a corrupt practice by publishing a false statement of fact regarding his own personal character and conduct and as such the said publication of false calculated statement of fact materially affected the prospects of the Contesting Candidates' election.

Necessary averments in this regard have been made in paragraph Nos. 14, 18, 19 and 20. It has been stated that the respondent was involved in criminal case and was charge-sheeted in case crime No. 661 of 1998 having charge sheet No. A 423 dated 19-12-1998 under sections 323/506 IPC, Police Station Attmaddola, District Agra. He was found guilty by the trial court but the returned candidate did not disclose this material fact during his election.

The following paragraph was added in the election petition :—

“The returned candidate not disclosed the F.I.R. No. registered as 347 of 2006 under section 25 of the Arms Act in Police Station Sikandra District Agra in which he was the co-accused and the case was registered being case crime No. 522 of 2006. The returned candidate also not disclose the F.I.R. No. 190 of 2003 dated 23-09-2003 which was registered as case crime No. 352 of 2003 Under Sections 147, 148, 149, 307 & 427 IPC Police Station Sikandra, District Agra in which the returned candidate is the one of the co-accused and investigation against the returned candidate is still continue. For kind perusal of this Hon'ble court copy of the First Information reports are being filed herewith and marked as Annexure No. 2 to this election petition.”

The respondent in reply has denied all these allegations and has come out with the case that he was acquitted long back in the aforesaid Case Crime No. 661 of 1998 by the judgment dated 16th of September, 2005. He has come out with the specific case that except in the aforesaid criminal case no. 661 of 1998, he was never charge-sheeted, prosecuted, tried or punished for any offence.

Having noticed the pleadings of the parties, it is apt to consider the evidence led by them. The election petitioner has examined himself as PW/1 who has stated in examination in chief that the elected candidate has filed a false affidavit at the time of filing of the nomination paper by stating that according to his knowledge no criminal case was pending in any Court. The said statement is wrong as he was charge-sheeted in case crime no. 661 of 1998 *vide* charge sheet no. A 423 dated 16-12-1998 and was confined to jail for the period 18th of December, 1998 to 22nd of December, 1998. In his election Campaign, the elected candidate has concealed all these facts and wrongly represented to the public at large that he has a clean image. He further states that he was involved in other criminal cases. In para 9 of the examination in chief it has been stated that he is involved in criminal case No. 522 of 2006 at police station Sikandrabad under section 25 of the Arms Act and is a co-accused therein. The other case is criminal case no. 352 of 2003 being FIR no. 190 of 2003 under sections 147, 148, 149, 307, 427 and 506 IPC, wherein the cognizance has been taken by the Court in respect of other co-accused persons, the investigation, so far as the elected candidate is concerned, is going on. In the cross examination he came out with the case that he has no knowledge as to whether any case/charge sheet has been filed against the elected candidate in any court of law. Indisputably, when the witness was confronted with the document no. A 22 with regard to the imprisonment of the elected candidate for the period 18-12-1998 to 22-12-1998 the witness pleads ignorance and states that he has no knowledge in what connection the elected candidate was confined to jail. Further, he could not state as to in which court proceedings, if any, in criminal case no. 661 of 1998 under sections 323 and 506 IPC is going on. He further pleads Ignorance as to whether any charge sheet has been filed in this case or not. On further cross examination, the witness stated that he has no knowledge of cognizance, if any, has been taken on any chargesheet by any Court in respect of any criminal case. A reading of the statement and cross examination as a whole would show that the witness has no knowledge about any criminal case in which the elected candidate was prosecuted or of any pending criminal proceedings. At the tail-end of the cross examination, the witness has come out with the case that he has a derivative knowledge of these facts from Kapil Dev son of Shri Ashok Kumar, Naresh Kumar son of Sri Ram Ji Lal, Ganeshi Lal son of late Shri Ram Chandra and Manoj Pawar. Thus, it is safe to infer that the witness has no knowledge of criminal case, if any, involving the elected candidate. The statement of witness is hearsay evidence.

The other witnesses examined by the election petitioner are Ashok Kumar Singh PW/2, Suryakant Divedi — PW/3, Station House Officers, PS Sikandrabad and Attamadola, District Agra, Kapildev PW/4, Naresh Kumar PW/5, Manoj Pawar PW/6 and Gulab Singh PW/7.

PW/2 namely Ashok Kumar Singh was examined who is Station House Officer, PS Attamadola, District Agra has stated that on 18th of December 1998 Case Crime No. 661 of 1998, 323 and 506 IPC was registered against Rama Shanker Kathoria, the elected candidate. He was arrested and was charge-sheeted on 19th of December, 1998 and was finally acquitted on 16th of September, 2005.

The other witnesses Kapildev PW/4, Naresh Kumar PW/5, Manoj Kumar PW/6 and Gulab Singh PW/7 have given stereotype evidence almost on identical lines that they incidentally heard about the bad image of the elected candidate from third parties. PW/4 states that he heard about the elected candidate while he was sitting at a tea stall. He also read about the elected candidate in the newspaper known as 'Amar Ujala'. The said newspaper is not on the record and he could not tell the date of publication of any such news relating to the elected candidate in the newspaper. Similar is the case with regard to the other witnesses. All of them have deposed on the basis of hearsay evidence and have stated that they have no personal knowledge about the tainted image of the elected candidate. The statements given by these witnesses are of no much help to prove the charges of corruption levelled against the winning candidate. The statements are hearsay evidence in nature. It is not safe to place reliance upon them. These statements do not inspire any confidence and witnesses are got up witnesses as none of them has any personal knowledge with regard to the image of the elected candidate nor any of these witnesses cared to verify the allegations levelled against the winning candidate from any authentic source or by visiting the court to find out the truth. The statements have been made with little sense of responsibility and are liable to be discarded.

It may be noted that in the unamended election petition, the only allegation worth the name with regard to the corrupt practices is that the elected candidate was convicted in the Case Crime No. 661 of 1998 under sections 323 and 506 IPC at Police Station Attamadola, District Agra. It is matter of record that the said allegation on the face of it is incorrect. The certified copy of the judgment of the Criminal Case No. 156 of 1999 (which arises out of Criminal Case No. 661 of 1998) dated 16th of September, 2005 acquitting the winning candidate from charges under sections 323 and 506 IPC, is on the

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record which finally clinches the matter, against election petitioner. It may be placed on record that no evidence was led by the election petitioner to show either the said judgment dated 16th of September, 2005 has been set aside, modified or reversed by any higher court or it does not relate to Case Crime No. 661 of 1998. In absence of any contrary material, it stands proved that the election petitioner was exonerated from criminal charge in the aforesaid case.

During the pendency of the proceedings, as stated herein above, the election petition was got amended by incorporating the paragraph already reproduced above whereby it was stated that the winning candidate was involved in the Criminal Case No. 347 of 2006 under section 25 of the Arms Act registered as Case Crime No. 522 of 2006 and in the F.I.R. No. 190 of 2003, dated 23-09-2003 which was registered as Case Crime No. 352 of 2003 under Section 147, 148, 149, 307 & 427 IPC Police Station Sikandra District Agra.

The said allegation introduced through amendment could not be substantiated by any cogent or relevant evidence by the election petitioner. On the contrary, it is matter of record that the winning candidate was even neither charge-sheeted nor any criminal proceeding did commence against him in respect of anyone of the aforesaid criminal cases.

The Station House Officer, Sikandrabad, Suryakant Divedi, produced by the election petitioner has deposed that as per the record available with the Police Station, the elected candidate is not involved in any criminal case nor is there any evidence against him on record.

Even the election petitioner could not dare to say anything otherwise in his deposition in this regard. He deposed only this much that according to him the criminal cases in respect of the aforesaid crime numbers are pending but he could not give the particulars, if any, of such case with regard to the Court where such cases are pending. The other witnesses examined by the election petitioner also could not support the averments made in the election petition with regard to the involvement of the elected candidate in any of the aforesaid criminal cases. At this stage, it may be noted that the elected candidate offered himself in the witness box as DW/1 and produced one Chandrapal as DW/2 and refuted the allegations made against him. Certified copy of the chick report of Case Crime No. 352 of 2003 which was withheld by the petitioner was filed by the respondent to show that the aforesaid case was registered against one Dr. Ram Shanker son of not known. The DW/1 states that he was not involved in such case and somebody else known as Ram Shanker was involved therein. The statement of PW/1 finds corroboration from the statement of DW/2 who has stated that Dr. Ram Shanker accused in the aforesaid case crime is some different person. There is no evidence to controvert the stand taken by these two witnesses. The statements of these witnesses in absence of any contrary evidence are trustworthy and reliable. Even otherwise also, as observed herein above, nothing much turned upon the statements of the witnesses in view of the fact that indisputably, the elected candidate has not yet been charge-sheeted. The Case Crime No. 352 of 2003 was got lodged by grandfather of Chandrapal DW/2 who has stated that the said case was lodged by his grandfather against Dr. Ram Shanker who was residing in his Mohalla as tenant. His grandfather expired on 25-12-2010 due to illness and therefore, he could not be examined. No cross-examination was done by the petitioner in respect of the aforesaid statement as stated in para 7 of the affidavit filed as examination in chief. Thus, it leads to irresistible conclusion that the elected candidate has nothing to do with the Case Crime No. 352 of 2003. However, it is not necessary to dwell upon any further as ultimately no charge sheet has been filed against the elected petitioner Dr. Ram Shanker Kathoria or (Dr. Ram Shanker) whose name is found in the FIR.

The upshot of the above discussion is that on the date of filing of nomination paper or subsequent thereto till the date of election the elected candidate was not involved in any manner in any criminal case. Nor he was wanted or convicted in any criminal case. For the sake of argument, even if it is accepted that some FIR was lodged against Ram Shanker Kathoria, mere lodging of FIR does not show that the person against whom FIR was lodged is a man of criminal background or of ill repute in absence of any evidence, charge sheet or criminal trial. The election petitioner has utterly failed to prove that any corrupt practice was adopted by the returned candidate. The election petition is founded on the ground of corrupt practice as mentioned in section 123(4) of Representation of People Act. The said section provides what shall be deemed corrupt practices for the purposes of said Act. Sub-section (4) of Section 123 states that the publication by candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to personal character or conduct of any candidate, being a statement reasonably calculated to prejudice the prospect of that candidate's election is one of the corrupt practices.

In the case on hand the petitioner has utterly failed to prove that any statement of fact made by the elected candidate is false.

The election petition is liable to be dismissed on the ground that it lacks the particulars of corrupt practices. It has been filed on the basis of general allegations without giving any particular with regard to the alleged representation by the petitioner when and to whom and in what manner the said representation was made. It does not disclose before whom the elected candidate stated that he is man of good and honest image. The evidence led by the election petitioner has already been discussed above. The same has been discarded being second hand.

The petitioner besides the above is guilty of making untrue averment in the petition that the trial Court has held him guilty in respect of the charge sheet no. A-423 dated 19th of December, 1998 under sections 323/506 IPC, PS. Attamadola, District Agra, vide para 14 of the petition. The contents of paragraph 14 have been sworn partly on personal knowledge and partly on perusal of record. It does not appear as to whether the aforesaid portion of paragraph 14 has been sworn on personal knowledge or on record. The record shows otherwise. The petitioner could not state in his deposition that he has personal knowledge about the conviction of the elected candidate in the aforesaid case crime number. This leads to the conclusion that the election petition has been filed by way of fishing and roving inquiry and lacks seriousness. Though no ruling was referred during the course of argument but along with the written argument, the petitioner has annexed the following rulings :—

1. Badat and Co. Bombay Vs. East India Trading Co., AIR 1964 SC 538;
2. Sushil Kumar Vs. Rakesh Kumar, AIR 2004 SC 230;
3. Kumara Nand Vs. Brijmohan Lal Sharma, 1967 AIR SC 808; and
4. Gadakh Yashwantrao Kankarrao Vs. E.V. Alias Balasaheb Vikhe Patil, 1994 SC 678.

It is difficult to find out any relevancy of these rulings to the facts of the case on hand. As per written argument, the judgment in the case of Kumara Nand Vs. Brijmohan Lal Sharma (supra) and Gadakh Yashwantrao Kankarrao Vs. E.V. Alias Balasaheb Vikhe Patil (supra) at serial nos. 3 and 4 are with regard to the import of the words "Statement of Fact" used in section 123(4) of the Representation of People Act. Nothing less and nothing more has been said about these rulings in the written argument and as such, it is not necessary for me to dwell upon them any further.

I find that there is no tangible evidence to show that the elected candidate was at any point of time convicted by any criminal court or by any court of law and that the election petition lacks material facts and particulars of the alleged corrupt practices and thus, is liable to be dismissed. In other words, the petitioner has failed to prove that the returned candidate has committed any corrupt practice.

In view of the above, the election petition is dismissed. The election petitioner is liable to pay a sum of Rs. 10,000 towards the cost to the returned candidate. In terms of proviso to section 119. The said cost shall be paid within a period as stipulated under section 121(1) as far as possible out of the security deposit and the remaining by the petitioner.

The Registrar General shall send a copy of this judgment to the Election Commissioner as well as the Speaker of Lok Sabha in terms of section 103 of the Representation of People Act.

Sd/-

Order Date : 27-4-2012

(Prakash Krishna, J.)

LBV

[No. 82/UP-HP/12/2009 (AIIId.)]

By Order,

R. K. SRIVASTAVA, Principal Secy.